



General Assembly

**Substitute Bill No. 5934**

January Session, 2009

\* \_\_\_\_\_ HB05934ENV \_\_\_\_\_ 032009 \_\_\_\_\_ \*

**AN ACT CONCERNING TRAINING REQUIREMENTS FOR INLAND  
WETLANDS COMMISSION MEMBERS AND PRESERVING NATURAL  
VEGETATION NEAR WETLANDS AND WATERCOURSES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-38 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 As used in sections 22a-36 to 22a-45a, inclusive, as amended by this  
4 act:

5 (1) "Commissioner" means the Commissioner of Environmental  
6 Protection;

7 (2) "Person" means any person, firm, partnership, association,  
8 corporation, limited liability company, company, organization or legal  
9 entity of any kind, including municipal corporations, governmental  
10 agencies or subdivisions thereof;

11 (3) "Municipality" means any town, consolidated town and city,  
12 consolidated town and borough, city and borough;

13 (4) "Inland wetlands agency" means a municipal board or  
14 commission established pursuant to and acting under section 22a-42;

15 (5) "Soil scientist" means an individual duly qualified in accordance

16 with standards set by the federal Office of Personnel Management;

17 (6) "Material" means any substance, solid or liquid, organic or  
18 inorganic, including, but not limited to soil, sediment, aggregate, land,  
19 gravel, clay, bog, mud, debris, sand, refuse or waste;

20 (7) "Waste" means sewage or any substance, liquid, gaseous, solid or  
21 radioactive, which may pollute or tend to pollute any of the waters of  
22 the state;

23 (8) "Pollution" means harmful thermal effect or the contamination or  
24 rendering unclean or impure of any waters of the state by reason of  
25 any waste or other materials discharged or deposited therein by any  
26 public or private sewer or otherwise so as directly or indirectly to  
27 come in contact with any waters;

28 (9) "Rendering unclean or impure" means any alteration of the  
29 physical, chemical or biological properties of any of the waters of the  
30 state, including, but not limited to change in odor, color, turbidity or  
31 taste;

32 (10) "Discharge" means the emission of any water, substance or  
33 material into waters of the state whether or not such substance causes  
34 pollution;

35 (11) "Remove" includes, but shall not be limited to drain, excavate,  
36 mine, dig, dredge, suck, bulldoze, dragline or blast;

37 (12) "Deposit" includes, but shall not be limited to, fill, grade, dump,  
38 place, discharge or emit;

39 (13) "Regulated activity" means any operation within or use of a  
40 wetland or watercourse involving removal or deposition of material,  
41 or any obstruction, construction, alteration or pollution, of such  
42 wetlands or watercourses, but shall not include the specified activities  
43 in section 22a-40, as amended by this act;

44 (14) "License" means the whole or any part of any permit, certificate

45 of approval or similar form of permission which may be required of  
46 any person by the provisions of sections 22a-36 to 22a-45a, inclusive, as  
47 amended by this act;

48 (15) "Wetlands" means land, including submerged land, not  
49 regulated pursuant to sections 22a-28 to 22a-35, inclusive, which  
50 consists of any of the soil types designated as poorly drained, very  
51 poorly drained, alluvial, and floodplain by the National Cooperative  
52 Soils Survey, as may be amended from time to time, of the Natural  
53 Resources Conservation Service of the United States Department of  
54 Agriculture;

55 (16) "Watercourses" means rivers, streams, brooks, waterways,  
56 lakes, ponds, marshes, swamps, bogs and all other bodies of water,  
57 natural or artificial, vernal or intermittent, public or private, which are  
58 contained within, flow through or border upon this state or any  
59 portion thereof, not regulated pursuant to sections 22a-28 to 22a-35,  
60 inclusive. Intermittent watercourses shall be delineated by a defined  
61 permanent channel and bank and the occurrence of two or more of the  
62 following characteristics: (A) Evidence of scour or deposits of recent  
63 alluvium or detritus, (B) the presence of standing or flowing water for  
64 a duration longer than a particular storm incident, and (C) the  
65 presence of hydrophytic vegetation;

66 (17) "Natural vegetation" means naturally occurring shrubs, trees or  
67 other plants growing around wetlands or watercourses, but does not  
68 include lawns or manicured grass areas;

69 (18) "Natural vegetation's function" includes maintaining or  
70 restoring the biological and ecological integrity of watercourses and  
71 wetlands ecosystems by filtering stormwater runoff, protecting water  
72 quality, preventing erosion, providing sedimentation control, reducing  
73 the impact of flooding and minimizing the loss of property;

74 [(17)] (19) "Feasible" means able to be constructed or implemented  
75 consistent with sound engineering principles;

76 [(18)] (20) "Prudent" means economically and otherwise reasonable  
77 in light of the social benefits to be derived from the proposed regulated  
78 activity provided cost may be considered in deciding what is prudent  
79 and further provided a mere showing of expense will not necessarily  
80 mean an alternative is imprudent.

81 Sec. 2. Section 22a-40 of the general statutes is repealed and the  
82 following is substituted in lieu thereof (*Effective October 1, 2009*):

83 (a) The following operations and uses shall be permitted in  
84 wetlands, areas around wetlands and watercourses, as of right:

85 (1) Grazing, farming, nurseries, gardening and harvesting of crops  
86 and farm ponds of three acres or less essential to the farming  
87 operation, and activities conducted by, or under the authority of, the  
88 Department of Environmental Protection for the purposes of wetland  
89 or watercourse restoration or enhancement or mosquito control. The  
90 provisions of this subdivision shall not be construed to include road  
91 construction or the erection of buildings not directly related to the  
92 farming operation, relocation of watercourses with continual flow,  
93 filling or reclamation of wetlands or watercourses with continual flow,  
94 clear cutting of timber except for the expansion of agricultural crop  
95 land, the mining of top soil, peat, sand, gravel or similar material from  
96 wetlands or watercourses for the purposes of sale;

97 (2) A residential home (i) for which a building permit has been  
98 issued or (ii) on a subdivision lot, provided the permit has been issued  
99 or the subdivision has been approved by a municipal planning, zoning  
100 or planning and zoning commission as of the effective date of  
101 promulgation of the municipal regulations pursuant to subsection (b)  
102 of section 22a-42a, as amended by this act, or as of July 1, 1974,  
103 whichever is earlier, and further provided no residential home shall be  
104 permitted as of right pursuant to this subdivision unless the permit  
105 was obtained on or before July 1, 1987;

106 (3) Boat anchorage or mooring;

107 (4) Uses incidental to the enjoyment and maintenance of residential  
108 property, such property defined as equal to or smaller than the largest  
109 minimum residential lot site permitted anywhere in the municipality,  
110 provided in any town, where there are no zoning regulations  
111 establishing minimum residential lot sites, the largest minimum lot site  
112 shall be two acres. Such incidental uses shall include maintenance of  
113 existing structures and landscaping but shall not include removal or  
114 deposition of significant amounts of material from or onto a wetland  
115 or watercourse or diversion or alteration of a watercourse;

116 (5) Construction and operation, by water companies as defined in  
117 section 16-1 or by municipal water supply systems as provided for in  
118 chapter 102, of dams, reservoirs and other facilities necessary to the  
119 impounding, storage and withdrawal of water in connection with  
120 public water supplies except as provided in sections 22a-401 and 22a-  
121 403; [and]

122 (6) Maintenance relating to any drainage pipe which existed before  
123 the effective date of any municipal regulations adopted pursuant to  
124 section 22a-42a, as amended by this act, or July 1, 1974, whichever is  
125 earlier, provided such pipe is on property which is zoned as residential  
126 but which does not contain hydrophytic vegetation. For purposes of  
127 this subdivision, "maintenance" means the removal of accumulated  
128 leaves, soil, and other debris whether by hand or machine, while the  
129 pipe remains in place;

130 (7) Activities conducted by, or under the authority of, the  
131 Department of Environmental Protection for the purposes of wetlands  
132 restoration and protection; and

133 (8) Activities conducted solely for natural resource management  
134 that further natural vegetation's function.

135 (b) The following operations and uses shall be permitted, as  
136 nonregulated uses in wetlands and watercourses, provided they do not  
137 disturb the natural and indigenous character of the wetland or  
138 watercourse by removal or deposition of material, alteration or

139 obstruction of water flow or pollution of the wetland or watercourse:

140 (1) Conservation of soil, vegetation, water, fish, shellfish and  
141 wildlife; and

142 (2) Outdoor recreation including play and sporting areas, golf  
143 courses, field trials, nature study, hiking, horseback riding, swimming,  
144 skin diving, camping, boating, water skiing, trapping, hunting, fishing  
145 and shellfishing where otherwise legally permitted and regulated.

146 (c) Any dredging or any erection, placement, retention or  
147 maintenance of any structure, fill, obstruction or encroachment, or any  
148 work incidental to such activities, conducted by a state agency, which  
149 activity is regulated under sections 22a-28 to 22a-35, inclusive, or  
150 sections 22a-359b to 22a-363f, inclusive, shall not require any permit or  
151 approval under sections 22a-36 to 22a-45, inclusive, as amended by this  
152 act.

153 Sec. 3. Section 22a-41 of the general statutes is repealed and the  
154 following is substituted in lieu thereof (*Effective October 1, 2009*):

155 (a) For purposes of this section, "wetlands or watercourses" includes  
156 aquatic, plant or animal life and habitats in wetlands or watercourses,  
157 and "habitats" means areas or environments in which an organism or  
158 biological population normally lives or occurs.

159 (b) In carrying out the purposes and policies of sections 22a-36 to  
160 22a-45a, inclusive, as amended by this act, including matters relating to  
161 regulating, licensing and enforcing of the provisions thereof, the  
162 commissioner shall take into consideration all relevant facts and  
163 circumstances, including, but not limited to:

164 (1) The environmental impact of the proposed regulated activity on  
165 wetlands or watercourses;

166 (2) The applicant's purpose for, and any feasible and prudent  
167 alternatives to, the proposed regulated activity which alternatives  
168 would cause less or no environmental impact to wetlands or

169 watercourses;

170 (3) The relationship between the short-term and long-term impacts  
171 of the proposed regulated activity on wetlands or watercourses and  
172 the maintenance and enhancement of long-term productivity of such  
173 wetlands or watercourses;

174 (4) Irreversible and irretrievable loss of wetland or watercourse  
175 resources which would be caused by the proposed regulated activity,  
176 including the extent to which such activity would foreclose a future  
177 ability to protect, enhance or restore such resources, and any  
178 mitigation measures which may be considered as a condition of  
179 issuing a permit for such activity including, but not limited to,  
180 measures to (A) prevent or minimize pollution or other environmental  
181 damage, (B) maintain or enhance existing environmental quality, or  
182 (C) in the following order of priority: Restore, enhance and create  
183 productive wetland or watercourse resources;

184 (5) The character and degree of injury to, or interference with,  
185 safety, health or the reasonable use of property which is caused or  
186 threatened by the proposed regulated activity; [and]

187 (6) Impacts of the proposed regulated activity on wetlands or  
188 watercourses outside the area for which the activity is proposed and  
189 future activities associated with, or reasonably related to, the proposed  
190 regulated activity which are made inevitable by the proposed  
191 regulated activity and which may have an impact on wetlands or  
192 watercourses; and

193 (7) The significance of the wetlands or watercourse, and the existing  
194 or expected future development in the area around the wetland or  
195 watercourse.

196 [(b)] (c) (1) In the case of an application which received a public  
197 hearing pursuant to (A) subsection (k) of section 22a-39, or (B) a  
198 finding by the inland wetlands agency that the proposed activity may  
199 have a significant impact on wetlands or watercourses, a permit shall

200 not be issued unless the commissioner finds on the basis of the record  
201 that a feasible and prudent alternative does not exist. In making his  
202 finding, the commissioner shall consider the facts and circumstances  
203 set forth in subsection (a) of this section. The finding and the reasons  
204 therefor shall be stated on the record in writing.

205 (2) In the case of an application which is denied on the basis of a  
206 finding that there may be feasible and prudent alternatives to the  
207 proposed regulated activity which have less adverse impact on  
208 wetlands or watercourses, the commissioner or the inland wetlands  
209 agency, as the case may be, shall propose on the record in writing the  
210 types of alternatives which the applicant may investigate provided this  
211 subdivision shall not be construed to shift the burden from the  
212 applicant to prove that he is entitled to the permit or to present  
213 alternatives to the proposed regulated activity.

214 [(c) For purposes of this section, (1) "wetlands or watercourses"  
215 includes aquatic, plant or animal life and habitats in wetlands or  
216 watercourses, and (2) "habitats" means areas or environments in which  
217 an organism or biological population normally lives or occurs.]

218 (d) A municipal inland wetlands agency shall not deny or condition  
219 an application for a regulated activity in an area outside wetlands or  
220 watercourses on the basis of an impact or effect on aquatic, plant, or  
221 animal life unless such activity will likely impact or affect the physical  
222 characteristics of such wetlands or watercourses.

223 (e) In carrying out the purposes and policies of sections 22a-36 to  
224 22a-45a, inclusive, as amended by this act, including matters relating to  
225 regulating, licensing and enforcing the provisions concerning the area  
226 around wetlands and watercourses regulated pursuant to section 22a-  
227 42a, as amended by this act, the commissioner or any municipal inland  
228 wetlands agency shall:

229 (1) Require the applicant to establish that any regulated activity is  
230 (A) consistent with the provisions of sections 22a-36 to 22a-45a,  
231 inclusive, as amended by this act, and (B) unlikely to have an adverse



232 impact cumulatively, in time and area, on the natural vegetation's  
233 function; and

234 (2) Determine the area subject to review with the goal of preserving  
235 the natural vegetation in the greater of (A) the first one hundred feet  
236 around any wetlands or watercourse, or (B) the area of floodplain  
237 mapped by the Federal Emergency Management Agency.

238 Sec. 4. Section 22a-42a of the general statutes is repealed and the  
239 following is substituted in lieu thereof (*Effective October 1, 2009*):

240 (a) The inland wetlands agencies authorized in section 22a-42 shall  
241 through regulation provide for (1) the manner in which the boundaries  
242 of inland wetland and watercourse areas in their respective  
243 municipalities shall be established and amended or changed, (2) the  
244 form for an application to conduct regulated activities, (3) notice and  
245 publication requirements, (4) criteria and procedures for the review of  
246 applications, and (5) administration and enforcement.

247 (b) No regulations of an inland wetlands agency including  
248 boundaries of inland wetland and watercourse areas shall become  
249 effective or be established until after a public hearing in relation  
250 thereto is held by the inland wetlands agency. Any such hearing shall  
251 be held in accordance with the provisions of section 8-7d. A copy of  
252 such proposed regulation or boundary shall be filed in the office of the  
253 town, city or borough clerk as the case may be, in such municipality,  
254 for public inspection at least ten days before such hearing, and may be  
255 published in full in such paper. A copy of the notice and the proposed  
256 regulations or amendments thereto, except determinations of  
257 boundaries, shall be provided to the commissioner at least thirty-five  
258 days before such hearing. Such regulations and inland wetland and  
259 watercourse boundaries may be from time to time amended, changed  
260 or repealed, by majority vote of the inland wetlands agency, after a  
261 public hearing in relation thereto is held by the inland wetlands  
262 agency, in accordance with the provisions of section 8-7d. Regulations  
263 or boundaries or changes therein shall become effective at such time as

264 is fixed by the inland wetlands agency, provided a copy of such  
265 regulation, boundary or change shall be filed in the office of the town,  
266 city or borough clerk, as the case may be. Whenever an inland  
267 wetlands agency makes a change in regulations or boundaries it shall  
268 state upon its records the reason why the change was made and shall  
269 provide a copy of such regulation, boundary or change to the  
270 Commissioner of Environmental Protection no later than ten days after  
271 its adoption provided failure to submit such regulation, boundary or  
272 change shall not impair the validity of such regulation, boundary or  
273 change. All petitions submitted in writing and in a form prescribed by  
274 the inland wetlands agency, requesting a change in the regulations or  
275 the boundaries of an inland wetland and watercourse area shall be  
276 considered at a public hearing held in accordance with the provisions  
277 of section 8-7d. The failure of the inland wetlands agency to act within  
278 any time period specified in this subsection, or any extension thereof,  
279 shall not be deemed to constitute approval of the petition.

280 (c) (1) On and after the effective date of the municipal regulations  
281 promulgated pursuant to subsection (b) of this section, no regulated  
282 activity shall be conducted upon any inland wetland or watercourse  
283 without a permit. Any person proposing to conduct or cause to be  
284 conducted a regulated activity upon an inland wetland or watercourse  
285 shall file an application with the inland wetlands agency of the town or  
286 towns wherein the wetland or watercourse in question is located. The  
287 application shall be in such form and contain such information as the  
288 inland wetlands agency may prescribe. The date of receipt of an  
289 application shall be determined in accordance with the provisions of  
290 subsection (c) of section 8-7d. The inland wetlands agency shall not  
291 hold a public hearing on such application unless the inland wetlands  
292 agency determines that the proposed activity may have a significant  
293 impact on wetlands or watercourses, a petition signed by at least  
294 twenty-five persons who are eighteen years of age or older and who  
295 reside in the municipality in which the regulated activity is proposed,  
296 requesting a hearing is filed with the agency not later than fourteen  
297 days after the date of receipt of such application, or the agency finds

298 that a public hearing regarding such application would be in the  
299 public interest. An inland wetlands agency may issue a permit without  
300 a public hearing provided no petition provided for in this subsection is  
301 filed with the agency on or before the fourteenth day after the date of  
302 receipt of the application. Such hearing shall be held in accordance  
303 with the provisions of section 8-7d. If the inland wetlands agency, or  
304 its agent, fails to act on any application within thirty-five days after the  
305 completion of a public hearing or in the absence of a public hearing  
306 within sixty-five days from the date of receipt of the application, or  
307 within any extension of any such period as provided in section 8-7d,  
308 the applicant may file such application with the Commissioner of  
309 Environmental Protection who shall review and act on such  
310 application in accordance with this section. Any costs incurred by the  
311 commissioner in reviewing such application for such inland wetlands  
312 agency shall be paid by the municipality that established or authorized  
313 the agency. Any fees that would have been paid to such municipality if  
314 such application had not been filed with the commissioner shall be  
315 paid to the state. The failure of the inland wetlands agency or the  
316 commissioner to act within any time period specified in this  
317 subsection, or any extension thereof, shall not be deemed to constitute  
318 approval of the application.

319 (2) An inland wetlands agency may delegate to its duly authorized  
320 agent the authority to approve or extend an activity that is not located  
321 in a wetland or watercourse when such agent finds that the conduct of  
322 such activity would result in no greater than a minimal impact on any  
323 wetland or watercourse provided such agent has completed the  
324 comprehensive training program developed by the commissioner  
325 pursuant to section 22a-39. Notwithstanding the provisions for receipt  
326 and processing applications prescribed in subdivision (1) of this  
327 subsection, such agent may approve or extend such an activity at any  
328 time. Any person receiving such approval from such agent shall,  
329 within ten days of the date of such approval, publish, at the applicant's  
330 expense, notice of the approval in a newspaper having a general  
331 circulation in the town wherein the activity is located or will have an

332 effect. Any person may appeal such decision of such agent to the  
333 inland wetlands agency within fifteen days after the publication date  
334 of the notice and the inland wetlands agency shall consider such  
335 appeal at its next regularly scheduled meeting provided such meeting  
336 is no earlier than three business days after receipt by such agency or its  
337 agent of such appeal. The inland wetlands agency shall, at its  
338 discretion, sustain, alter or reject the decision of its agent or require an  
339 application for a permit in accordance with subdivision (1) of  
340 subsection (c) of this section.

341 (d) (1) In granting, denying or limiting any permit for a regulated  
342 activity the inland wetlands agency, or its agent, shall consider the  
343 factors set forth in section 22a-41, as amended by this act, and such  
344 agency, or its agent, shall state upon the record the reason for its  
345 decision. In granting a permit the inland wetlands agency, or its agent,  
346 may grant the application as filed or grant it upon other terms,  
347 conditions, limitations or modifications of the regulated activity which  
348 are designed to carry out the policy of sections 22a-36 to 22a-45,  
349 inclusive, as amended by this act. Such terms may include any  
350 reasonable measures which would mitigate the impacts of the  
351 regulated activity and which would (A) prevent or minimize pollution  
352 or other environmental damage, (B) maintain or enhance existing  
353 environmental quality, or (C) in the following order of priority:  
354 Restore, enhance and create productive wetland or watercourse  
355 resources. No person shall conduct any regulated activity within an  
356 inland wetland or watercourse which requires zoning or subdivision  
357 approval without first having obtained a valid certificate of zoning or  
358 subdivision approval, special permit, special exception or variance or  
359 other documentation establishing that the proposal complies with the  
360 zoning or subdivision requirements adopted by the municipality  
361 pursuant to chapters 124 to 126, inclusive, or any special act. The  
362 agency may suspend or revoke a permit if it finds after giving notice to  
363 the permittee of the facts or conduct which warrant the intended action  
364 and after a hearing at which the permittee is given an opportunity to  
365 show compliance with the requirements for retention of the permit,

366 that the applicant has not complied with the conditions or limitations  
367 set forth in the permit or has exceeded the scope of the work as set  
368 forth in the application. The applicant shall be notified of the agency's  
369 decision by certified mail within fifteen days of the date of the decision  
370 and the agency shall cause notice of their order in issuance, denial,  
371 revocation or suspension of a permit to be published in a newspaper  
372 having a general circulation in the town wherein the wetland or  
373 watercourse lies. In any case in which such notice is not published  
374 within such fifteen-day period, the applicant may provide for the  
375 publication of such notice within ten days thereafter.

376 (2) Any permit issued under this section for the development of  
377 property for which an approval is required under section 8-3, 8-25 or 8-  
378 26 shall be valid for five years provided the agency may establish a  
379 specific time period within which any regulated activity shall be  
380 conducted. Any permit issued under this section for any other activity  
381 shall be valid for not less than two years and not more than five years.  
382 Any such permit shall be renewed upon request of the permit holder  
383 unless the agency finds that there has been a substantial change in  
384 circumstances which requires a new permit application or an  
385 enforcement action has been undertaken with regard to the regulated  
386 activity for which the permit was issued provided no permit may be  
387 valid for more than ten years.

388 (e) The inland wetlands agency may require a filing fee to be  
389 deposited with the agency. The amount of such fee shall be sufficient  
390 to cover the reasonable cost of reviewing and acting on applications  
391 and petitions, including, but not limited to, the costs of certified  
392 mailings, publications of notices and decisions and monitoring  
393 compliance with permit conditions or agency orders.

394 (f) If a municipal inland wetlands agency regulates activities within  
395 areas around wetlands or watercourses, such regulation shall (1) be in  
396 accordance with the provisions of the inland wetlands regulations  
397 adopted by such agency related to application for, and approval of,  
398 activities to be conducted in wetlands or watercourses, and (2) apply

399 only to those activities which are likely to impact or affect wetlands or  
400 watercourses in the immediate vicinity of the regulated activity or  
401 throughout the watershed of such wetland or watercourse.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	22a-38
Sec. 2	<i>October 1, 2009</i>	22a-40
Sec. 3	<i>October 1, 2009</i>	22a-41
Sec. 4	<i>October 1, 2009</i>	22a-42a

**ENV**      *Joint Favorable Subst.*